

0610.04 Purchase Termination/Cancellation – *Post Award*

Issued October 31, 2007

SUBJECT: Purchase Termination/Cancellation

APPLICATION: Executive branch departments and sub units.

PURPOSE: To prescribe the process for termination/cancellation of a non-delegated authority purchase.

CONTACT AGENCY: Department of Management and Budget (DMB)
Business Services Administration
Purchasing Operations (PurchOps)

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SUMMARY: These procedures apply to vendor performances, either positive or negative. These procedures are mandatory for executive branch departments unless specifically provided otherwise by statute.

The State may cancel/terminate a Purchase Order (PO) or Blanket Purchase Order (BPO) without further liability or penalty to the State, its departments, divisions, agencies, offices, commissions, officers, agents and employees for any of the following reasons according to the parameters laid out within the PO or BPO contract:

- Cause
- Convenience
- Non-Appropriation
- Criminal Conviction
- Approvals Rescinded
- Unacceptable pricing/terms on a vendor-submitted request for modification

The Vendor Performance module in ADPICS is an important tool utilized in establishing a record of vendor performance, as well necessary documentation for contract management. Documentation surrounding ongoing performance concerns is required to pursue termination for material breach.

APPLICABLE FORMS AND PROCESSES: Contract Compliance Report(s)
Vendor Score Card(s)
Right to Cure Letter
Termination/Cancellation Letter
Internal Agency Policies/Procedures
MAIN Electronic Documents & Processes:

- Vendor Performance (PCHL 5260)
- Vendor Performance Disposition (PCHL 5270)
- Vendor Performance Inquiry (PCHL 5280)
- Purchase Cancellation (PCHL8500)

DMB PurchOps Procedures & Policy Letters:

- Signature Authority Letter
- PurchOps Internal Procedures for contract compliance monitoring, vendor performance, contract change processing, termination/cancellation, and close out.

Procurement documentation:

- Notice of Contract with all executed Contract Change Notices
- Purchase Order with any posted Advices of Change
- Documentation surrounding vendor performance communications formal and informal
- Documentation surrounding contract change request prompting termination
- Documentation surrounding specific reason for termination request
- Contract Folder Tabs 1-6

APPROVALS: Agency & PurchOps: Internal and external approvals must be obtained and documented according to agency policies and procedures, including provisions surrounding signature authority.

PROCEDURES:

Agency:

- Must follow their department's procurement policies and procedures, recognizing that the policies and procedures of the delegating authority supersede those of the department in the event of a conflict.

Department/Agency Contract Compliance Inspector (CCI):

- Identifies that a problem exists with a vendor's performance or requested modification, relative to an existing contract (PO, or BPO).
- Reviews the terms, conditions, and specifications of the contract to verify that the expected level of performance is a requirement of the contract. It is important to understand the contract and know the obligations of both the contractor and the State.
- Follows the process outlined in the Administrative Guide for vendor performance (see procedure 0610.03 Vendor Performance), alerting the PurchOps buyer when the situation is at the point of the third formal complaint to vendor, and of the desire to initiate termination/cancellation proceedings for material breach. There may be situations where a contract must be immediately terminated and there is not sufficient time for three complaints, for example when public security and safety are negatively impacted. In these cases, the PurchOps Contract Administrator or Buyer may issue immediate notice of termination with documentation supporting the action maintained within the contract file.
- Provides PurchOps contract administrator/buyer with all requested documentation surrounding contract performance in cases where termination/cancellation for material breach is requested.
- Provides PurchOps contract administrator/buyer with all requested documentation surrounding requests for termination for any other reason, convenience, felony conviction, non-appropriation, unacceptable change request, or rescinded approvals.

PurchOps:

- Confirms that the process outlined in the Administrative Guide for vendor performance (see procedure 0610.03 Vendor Performance) has been followed for all performance issues occurring prior to the request for termination/cancellation for material breach.
- The PurchOps contract administrator maintains the responsibility for investigating all matters at issue thoroughly before determining an appropriate disposition. This includes a review of all documentation surrounding the issue as presented by both the agency and the contracted vendor. As part of this review PurchOps will assess the level to which each party met, or failed to meet their contractual obligations, and the impact this success or failure brings to bear on the matter under review.
- PurchOps must be the party that takes any necessary action related to termination/cancellation of a contract, issuing a stop work order, or the suspension or debarment of a vendor, after consideration and consultation with the using agency of a contract regarding available alternatives. This applies to PO's & BPO's regardless of the reason for the termination request (non-appropriation, felony conviction, convenience, etc.).

- In the event PurchOps determines that termination is the appropriate course of action, the contract administrator, buyer, buyer manager, or division director will issue a right to cure letter in cases of material breach. The right to cure letter gives notice to the vendor of the actions which must be taken within 30 days of the date on the notice, to prevent contract termination/cancellation.
- PurchOps will confirm with both the agency and the vendor whether the conditions were successfully met within the designated time period, prior to issuing a termination letter.
- In the event the conditions are adequately satisfied, the PO/BPO will remain in effect, with any approved modifications incorporated through contract change notices or advices of change (see procedure 0610.02 Advice of Change).
- In the event the conditions are not adequately satisfied within the necessary time period as stated within the right to cure letter, PurchOps will issue a letter of termination/cancellation, stating the effective date of the action, and outlining any rights and/or obligations of the vendor resulting from the action.
- In cases of termination/cancellation for reasons other than material breach, PurchOps will issue the termination/cancellation letter upon review of documentation supporting and verifying the correctness of the course of action.
- PurchOps will maintain copies of all final documentation surrounding the review and termination/cancellation action within the PO/BPO contract folder.

AUTHORITY: Relevant Acts:

- Public Act 431, of 1984 as amended (Governing Authority)

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